



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/198,376	11/24/98	OKAMOTO	A NU-98035

QM02/1010
WHITHAM CURTIS AND WHITHAM
RESTON INTERNATIONAL CENTER
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RESTON VA 20191

EXAMINER

FLANIGAN, A

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 10/10/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.

09/198,376

Examiner

Allen J. Flanigan

Applicant(s)

OKAMOTO ET AL.

Art Unit

3743

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 September 2000 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either a timely filed amendment which places the application in condition for allowance or a Notice of Appeal. Alternatively, applicant may obtain further examination by timely filling a request for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d).

PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 707.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136 (a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked.

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (see NOTE below);
- (b) ☐ they raise the issue of new matter. (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

4. ☐ Applicant's reply has overcome the following rejection(s): _____
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
- Claim(s) allowed: _____
- Claim(s) objected to: _____
- Claim(s) rejected: 1, 4-6, 11-19, and 26-30.
- Claim(s) withdrawn from consideration: _____
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
11. ☐ Other: _____

Allen J. Flanigan
Allen J. Flanigan
Primary Examiner
Art Unit: 3743

Continuation of 6. does NOT place the application in condition for allowance because: Applicants' assertions regarding Benson (sic, Benson et al.) are not persuasive. Applicants appear to be arguing that Benson et al. is inoperable, to the extent that the disclosed Vanadium Oxide material is not varying in emissivity as stated in the disclosure of Benson. The applicants offer a paper by Neuman et al. on the pressure dependence of the Electrical resistance of VO₂, which paper is entirely in agreement with and consistent with the disclosure of Benson et al. Neuman et al. are concerned with Electrical resistance, not thermal resistance, and their findings are consistent with the disclosure of Benson et al. in lines 18-28 of column 13. Nor are any of the other arguments presented persuasive; as indicated previously, the selection of a known material based on its suitability for an intended use (by virtue of having a desired effective temperature range in which its emissivity varies) would have been obvious absent a showing that these materials are not in fact known to have a thermochromic characteristic, or absent a showing of unexpectedly superior results. Indeed, the translation of Okamoto Kokai 1-212699 provided by the applicants in their response confirms that the use of the claimed substances for variable emittance radiation temperature control is known in the art.